

IN THE UNITED STATES DISTRICT
COURT EASTERN DISTRICT OF
WISCONSIN

The ESTATE OF SYLVILLE K. SMITH, by)	
Personal Representative Mildred Haynes,)	No. 17-cv-862
Patrick Smith, and Mildred Haynes, on her)	
own behalf,)	
)	
Plaintiffs,)	JURY TRIAL DEMANDED
)	
v.)	
)	
CITY OF MILWAUKEE, WISCONSIN)	
and DOMINIQUE HEAGGAN-BROWN,)	
)	
Defendants.)	

EXHIBIT 6

Heaggan-Brown Deposition Transcript Vol. 1

David B. Owens
Danielle Hamilton
LOEVY & LOEVY
311 N. Aberdeen St, Third FL
Chicago, IL 60607
(312) 243-5900

In the Estate of Sylville K. Smith vs City of Milwaukee, et al.

2:17CV862-LA

Transcript of the Testimony of:

DOMINIQUE HEAGGAN-BROWN

October 02, 2018



IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

THE ESTATE OF SYLVILLE K.
SMITH, by Personal
Representative Mildred
Haynes, Patrick Smith, and
Mildred Haynes, on her own
behalf,

Plaintiffs,

vs.

Case No. 2:17CV862-LA

CITY OF MILWAUKEE, WISCONSIN,
and DOMINIQUE HEAGGAN-BROWN,

Defendants.

VIDEO DEPOSITION OF DOMINIQUE L. HEAGGAN-BROWN,

witness in the above-entitled action, taken
under the provisions of the Federal Rules of
Civil Procedure, before Mary P. Hader,
Registered Professional Reporter and Notary
Public in and for the State of Wisconsin, at
Dodge Correctional Institution, 1 West Lincoln
Street, Waupun, Wisconsin, on October 2, 2018,
commencing at 8:55 a.m. and adjourning
at 4:06 p.m.

1 APPEARANCES :

2
3
4 FOR THE PLAINTIFFS:

5 LOEVY & LOEVY
6 ATTORNEY DAVID B. OWENS
7 311 North Aberdeen Street, 3rd Floor
8 Chicago, IL 60607

9 FOR THE DEFENDANTS:

10 MILWAUKEE CITY ATTORNEY'S OFFICE
11 ASSISTANT CITY ATTORNEY NAOMI E. GEHLING
12 DEPUTY CITY ATTORNEY JAN SMOKOWICZ
13 841 North Broadway, 7th Floor
14 Milwaukee, WI 53202-3515

15
16 ALSO PRESENT:

17 Jon Hansen, CLVS, Videographer
18
19
20
21
22
23
24
25

WITNESS INDEX

WITNESS NAME:	EXAMINATION BY:	PAGE:
Dominique Heaggan-Brown	Mr. Owens	5-297

EXHIBIT INDEX

NUMBER:	PAGE:
Exh. 1 -- MPD Investigation Employee Case File History	74
Exh. 2 -- Letter 10-31-16	74
Exh. 3 -- Letter MPD DHB005123	74
Exh. 4 -- Use of Force History	74
Exh. 5 -- MPD Applicant Personal History Questionnaire	165
Exh. 6 -- Memo 2-12-10	174
Exh. 7 -- Memo 1-7-13	184
Exh. 8 -- Memo Police Aide Transfers 11-28-12	205
Exh. 9 -- MPD Investigation Employee Case File History	217
Exh. 10 -- Case Management Record MPD DHB004962	224
Exh. 11 -- ACISS Interview 16-4915/15	230
Exh. 12 -- Text messages	244
Exh. 13 -- Officer Activity Report	286

(Original exhibits attached to original transcript.
Copies of exhibits attached to transcript copies.)

OBJECTION INDEX

BY:	PAGE:
Ms. Gehling	33, 275

REQUESTS

ITEM:	PAGE:
(No requests were made during the course of this proceeding.)	

1 THE VIDEOGRAPHER: Good morning. We
2 are on the record. This is the videotape
3 deposition of Dominique Heaggan-Brown in the
4 matter of the estate of Sylville K. Smith,
5 et al, versus City of Milwaukee, et al, in the
6 United States District Court, Eastern District
7 of Wisconsin, Case number 17-CV-862-LA. This
8 deposition is taking place at Dodge County
9 Correctional, Waupun, Wisconsin. Today's date:
10 October 2, 2018. The time: 8:55. My name is
11 Jon Hansen, CLVS, videographer with U.S. Legal,
12 Milwaukee, Wisconsin. At this time, if counsel
13 could please state their appearance for the
14 record, after which our reporter will swear in
15 the witness and we can proceed.

16 MR. OWENS: This is David B. Owens on
17 behalf of the estate of Sylville Smith.

18 MS. GEHLING: Naomi E. Gehling,
19 Assistant City Attorney, and Jan Smokowicz,
20 Deputy City Attorney on behalf of all
21 defendants.

22 THE REPORTER: Please raise your right
23 hand.

24 DOMINIQUE L. HEAGGAN-BROWN,
25 having been called as a witness herein,

1 didn't intentionally omit anything from the
2 police aide application, correct?

3 A Yes.

4 Q All right. You have here also the DCI statement
5 of your interview related to the shooting of
6 Sylville Smith?

7 A Yes.

8 Q Now, you've read this a few times, right?

9 A Yes.

10 Q And is this accurate?

11 A Yes.

12 Q Okay. And you had the opportunity to just go --
13 to go over this with your attorneys before it
14 was finalized, correct?

15 A Yes.

16 Q And this is something that came up during your
17 criminal trial, right?

18 A Yes.

19 Q And did you review -- read this document on
20 Friday?

21 A I actually read it this morning.

22 Q Okay. Well, that was my next question. Did you
23 also read it on Friday?

24 A No.

25 Q You didn't read it during your meeting with your

1 attorney?

2 A No. I glanced over the documents, but I
3 actually didn't read it with my attorney, no.

4 Q Okay. And then -- but you did read it this
5 morning?

6 A Yes.

7 Q Okay. And so am I right that you have had the
8 opportunity to review the statement after
9 meeting with your union attorneys, your criminal
10 defense attorneys, and now your attorneys for
11 the City of Milwaukee?

12 A That is correct.

13 Q All right. Is there anything inaccurate in this
14 statement?

15 A No.

16 Q Is there anything that you want to correct or
17 change?

18 A No.

19 Q And, just for the record, this is not Bates
20 stamped, but it is ACISS interview 16-4915/15.
21 It's report 15 from DCI, just for the record,
22 and it's a nine page document. Does that sound
23 right?

24 A Yes.

25 Q Did I describe that correctly?

1 A That's correct.

2 Q Okay. Thank you.

3 And this accurately describes what
4 happened with the events leading up to the
5 shooting of Sylville Smith?

6 A Yes.

7 Q And the foot chase that you had before you fired
8 two shots at Sylville Smith?

9 A Yes.

10 Q Did you fire two shots?

11 A Did I fire two shots?

12 Q Yes, sir.

13 A Yes.

14 Q Okay. Was there three?

15 A I fired two shots.

16 Q All right.

17 A I don't know anything about a third shot.

18 Q I'm just -- I'm -- I'm asking for your
19 testimony. Okay?

20 A Okay.

21 Q You're aware that some witnesses thought they
22 heard three shots, right? Did you hear that?

23 A I heard a lot of things so it was hard to
24 diminish --

25 Q Fair enough.

1 of -- a small amount of people taser trained,
2 so -- which means that we were all we have -- we
3 will all we have to be available to go use a
4 taser if anybody needed a taser, but, other than
5 that, that's the only thing I can recall --

6 Q Okay.

7 A -- from us having talks about uses of force at
8 the district.

9 Q Okay. And the use of force claim for -- related
10 to Sylville Smith -- or, excuse me, related to
11 Ronnie Martin --

12 A Yes.

13 Q -- you were cleared in that one, right? From
14 the department.

15 A I believe so, yes.

16 Q Have you seen any of the reports on that?

17 A I've seen the reports that I drafted up, but I
18 haven't really heard anything else about that.

19 Q Okay. Do you -- now, you gave an interview
20 related to the shooting of Sylville Smith. We
21 talked about that statement, right?

22 A That's correct.

23 Q And you gave that interview before the criminal
24 charges were --

25 A Yes.

1 A Yes.

2 Q Were you referring to the defense and arrest
3 tactics manual, a copy of which I've given you
4 from December '14 here? Is that what you meant
5 by the manual?

6 A I believe so, yes.

7 Q Well, you were trained in this manual, right,
8 the DAT manual?

9 A Correct, correct.

10 Q And, you know, when you shot and killed Sylville
11 Smith, you were required to follow the DAT
12 manual, right?

13 A Yes.

14 Q That was your training?

15 A Yes.

16 Q And you were required to follow the Milwaukee
17 Police Department use of force policy, correct?

18 A That's correct.

19 MR. OWENS: Are you doing all right?

20 MS. GEHLING: There's only five more
21 minutes before they come at 11:30.

22 MR. OWENS: Unless this is a moment of
23 reckoning.

24 MR. SMOKOWICZ: Should we go off the
25 record for a minute just to --

1 correct?

2 A Yes.

3 Q All right. August 15th, that's the day that you
4 gave your statement to internal affairs,
5 correct?

6 Do you want to see a copy just to
7 confirm the dates?

8 A Yes.

9 MS. GEHLING: And while you're looking
10 for that, do you mean DCI?

11 MR. OWENS: Yeah. What did I say?

12 MS. GEHLING: Internal affairs.

13 MR. SMOKOWICZ: You said internal
14 affairs.

15 MR. OWENS: Oh, sure; thanks.

16 EXAMINATION

17 BY MR. OWENS:

18 Q I just want us to get on the same page number,
19 so I'm going to ask you those same three
20 questions again, but with the last one correct.
21 All right?

22 August 13, in the afternoon, that's
23 when you shot and killed Sylville Smith,
24 correct?

25 A Yes.

1 Q August 14th, Sunday, that's the evening that you
2 went to the bar, the Eastsider, with N.S.,
3 correct?

4 A Yes.

5 Q You woke up the next morning and you took N.S.
6 to the hospital, correct?

7 A I'm not sure if that's the sequence of how
8 everything happened the next morning.

9 Q What happened the next morning?

10 A Monday; maybe it was Monday. I think it was
11 maybe Monday that I -- I went to the hospital,
12 or maybe -- yeah, Monday morning. It was Monday
13 morning.

14 MR. OWENS: We can mark this as
15 Exhibit 11, please.

16 (DLHB Exhibit No. 11
17 marked for identification.)

18 MR. OWENS: Thank you.

19 EXAMINATION

20 BY MR. OWENS:

21 Q All right. Exhibit 11, this is a copy of a
22 document that you had multiple copies of here
23 with you at the prison, correct?

24 A Yes.

25 Q This is the one that you previously testified

1 was true and accurate, correct?

2 A Yes.

3 Q All right. And do you see that the date
4 listed here where it says occurrence
5 from 8-15-2016, 11:15 to occurrence,
6 through 8-15, 2016?

7 A Correct.

8 Q Okay. And then if you look at the page one, the
9 very top, it says on Monday, August 15
10 at 11:15 a.m., and then it goes on there and
11 describes the interview with you. Do you see
12 that?

13 A Correct.

14 Q Okay. So we've got -- the 13th is the day of
15 the shooting?

16 A Yes.

17 Q Saturday?

18 A Yes.

19 Q Sunday is the day you go to the bar. Monday is
20 the day of the interview, correct?

21 A Yes.

22 Q You went to the hospital before this interview,
23 right?

24 A Yes.

25 Q All right. And when you woke up in the

1 squad that had a dashboard camera on it?

2 A Correct.

3 Q Why was that?

4 A Well, there's a -- the department has a
5 procedure about squad cars. And most squad cars
6 have cameras. There are squads that do not have
7 them. But, in most cases, if you are a outlier,
8 they -- the lieutenant will request or they
9 would prefer you to be into a squad car that has
10 an actual working dash camera on it.

11 Q Okay. And that was something that was at the
12 discretion of the lieutenant. Is that correct?

13 A I can't honestly say if the discretion was on
14 the lieutenant, but they had a lot of say so.
15 They wouldn't let -- not let us go out just
16 because there's a car with a malfunctioning
17 camera or -- or a -- or a car without a camera
18 at all.

19 Q Okay. But you were a bike cop, right?

20 A Bicycle patrol, yes.

21 Q Right. And you were -- I'm sorry. You were a
22 member of the District 7 bicycle patrol,
23 correct?

24 A That's correct.

25 Q And as a member of the District 7 bicycle

1 A No, not intentionally encourage pursuits.

2 Q Do you -- do you have any memory of -- of an
3 officer saying, hey, let's try to get some more
4 chases or anything like that?

5 A Malafa, I believe, went on an OPS. He said it
6 on the radio. I do remember, I think my
7 attorney was showing me some connections or
8 radio transmissions, Malafa made a quick -- a
9 little comment like that.

10 MS. GEHLING: If I can just remind
11 you, when you're talking about your attorneys,
12 if you could identify which attorneys and let's
13 get it down for the record.

14 THE WITNESS: Okay. Steven and
15 Jonathan, my criminal defense attorneys.

16 EXAMINATION

17 BY MR. OWENS:

18 Q Okay. So you remain -- you were reminded of the
19 fact that Officer Malafa said that, right?

20 A I wasn't reminded. They were just going through
21 radio transmissions.

22 Q All right. And so you -- you heard the radio
23 transmission of Officer Malafa say, let's try to
24 get a foot pursuit going, right?

25 A I don't know exactly what he said, but it was --

1 Q Something like that.

2 A -- something to that nature or to that effect.

3 Q All right. And that was right before you
4 engaged Sylville Smith and Mr. Pritchard,
5 correct?

6 A I'm not sure. I'm not sure if that happened
7 exactly right before.

8 Q Well, do you remember what happened on the audio
9 right after that?

10 A Again, if I don't know right before, I wouldn't
11 know right after. I -- I -- I believe I split
12 up on a traffic stop, so I don't know if he may
13 have made that comment earlier or was that later
14 in the shift. I don't really remember what time
15 he actually said that on our detail.

16 Q Okay. Did it surprise you when he said it?

17 A Did it surprise me?

18 Q Yeah.

19 A No, I wouldn't say it surprised me.

20 Q Isn't it true that you approached the car that
21 Sylville Smith was parked in, the intention of
22 getting -- engaging in a foot pursuit?

23 A No.

24 Q Why did you jump out of your car in the way that
25 you did?

1 A Because the -- the actions of Pritchard, the
2 passenger, led me to believe that an immediate
3 and unprovoked flight upon the path of seeing a
4 police officer, I mean, that's constituted as
5 resisting. So I knew based off my observations
6 of him that he wasn't going to go with the
7 program, he was going to flee. He was going to
8 attempt to flee.

9 Q Okay. So you jumped out of the car, right?

10 A I didn't jump out of the car, but I got out of
11 the vehicle.

12 Q Got out of the car very quickly?

13 A Correct.

14 Q Fair enough?

15 And you were ready to engage in a foot
16 pursuit, right?

17 A I was not ready to engage in a foot pursuit. I
18 was --

19 Q You were --

20 A I was trying to digest -- I mean, anything is
21 happening that would be complacent for me to
22 just say, oh, they're going to run. We could
23 have been confronted by gunfire right away, so I
24 don't know. I'm just -- you were ready for
25 whatever happens. It's no foot pursuit or --

1 you don't know.

2 Q Okay. Well, you didn't see them committing any
3 violent crimes, right?

4 A Correct.

5 Q And you didn't see them committing any felonies,
6 correct?

7 A When you say they, I just want to correct that.
8 I didn't see Sylville at first at all inside of
9 the vehicle or whatnot. All I seen was the
10 observations of the passenger.

11 Q Okay. You didn't see Mr. Pritchard waving a gun
12 around, right?

13 A I did not.

14 Q You weren't there specifically on a call. There
15 was a crime in progress, right?

16 A Correct.

17 Q You weren't there -- you didn't see
18 Mr. Pritchard committing any violent acts
19 against any individual, correct?

20 A Correct.

21 Q When you pulled up on the car, you observed
22 somebody. It's your testimony that you thought
23 he was going to engage in a foot pursuit,
24 correct?

25 A He was about to flee or hide something or get

1 rid of something. He was about to do something.

2 Q Okay. And you engaged in foot pursuits pretty
3 regularly as a member of the District 7 bike
4 patrol, correct?

5 A I wouldn't say a full -- I wouldn't categorize
6 it as a bike patrol. It's just some of us,
7 we -- everybody doesn't like to do work, I would
8 say. I wouldn't say everybody likes to run and
9 do stops, but we -- we try -- I can speak for
10 the group I was with, me, myself, and Malafa, we
11 actually liked to make stops and we know that
12 when we're going into areas, it's a possibility,
13 so --

14 Q Okay. I -- I -- my question was a little bit
15 different, which is, it was something that you
16 did regularly, correct?

17 A Yes.

18 Q All right. And you saw a plate. You saw the
19 car with out-of-state plates, right?

20 A Correct.

21 Q And you got out of the car pretty quickly,
22 right?

23 A Correct.

24 Q All right. You immediately withdrew your
25 firearm, correct?

1 it just doesn't save or go over to the hard
2 drive or whatnot.

3 So whenever -- the policies has been
4 amended because I was one of the first guys to
5 get a body camera. They were just implementing
6 the system. So that the training that they have
7 for the body cameras may not be as detailed as
8 it is now that -- I don't know if everybody has
9 the body camera, so whenever we had contacts or
10 citizen contacts with people, we're supposed to
11 activate that body camera and record it.

12 Q Okay. And so -- and just to be clear, I'm
13 talking about your experience in August of 2016.
14 If they've done something else now, everybody
15 else would get really, really mad at me if I
16 tried to use that against you.

17 A Right.

18 Q Okay?

19 A All right.

20 Q So what I'm just asking is about your training
21 and experience in August of 2016. Okay? And it
22 was your understanding that the body camera was
23 always recording, correct?

24 A Correct.

25 Q But it would only save back -- it would start

1 recording audio when you tapped it on your
2 chest, correct?

3 A I don't think it would start recording audio. I
4 think it would start recording 15 to 30 seconds
5 without audio, and then audio would kick in. So
6 it would catch the first 15 to 30 seconds
7 before -- I don't know -- yeah, I think it would
8 just take the prior footage, and I'm not really
9 sure, but I just know that it's a gap between
10 audio. So I don't know if it's from when you
11 hit it or if it's 15 to 30 seconds already and
12 then it starts immediately recording, so --

13 Q You have an understanding about the fact that
14 there is, from the time that you hit it, it goes
15 back 30 seconds to what has been previously been
16 recorded?

17 A I have an understanding that that happens.

18 Q Okay. So just to get on the same page, that, if
19 you have a body camera that's running, then when
20 you hit it, it starts recording, but you'll
21 have 30 seconds of silent video before that
22 without audio. Is that your understanding?

23 A 15 to 30 seconds, I believe, approximately, yes.

24 Q Okay. And, in this instance, you didn't -- you
25 activated your body camera almost immediately

1 guess you don't like the phrase bike patrol.

2 How would you describe it?

3 A Bike patrol. That's a fair statement.

4 Q Okay.

5 A You said bike cop at first, so --

6 Q District 7 bike patrol?

7 A Yes.

8 Q All right. As a member of the District 7 bike
9 patrol, even though you didn't like it, you
10 weren't looking for it, you did routinely engage
11 in foot pursuits, correct?

12 A I didn't say I didn't like foot pursuits. I
13 said that wasn't my intention to get into foot
14 pursuits. But I loved the job. I like to be
15 physically active. I like helping people, so I
16 wouldn't say I didn't like what I was doing,
17 but --

18 Q Did you regularly engage in foot pursuits as a
19 member of the District 7 bike patrol?

20 A Yes.

21 Q And had you engaged in foot pursuits of
22 individuals who had firearms as a member of the
23 District 7 bike patrol?

24 A Yes.

25 Q And had you recovered firearms from individuals

1 as a result of foot pursuits in your experience
2 as a member of the District 7 bike patrol?

3 A Yes.

4 MR. OWENS: And I want to just have
5 you help me understand this document.

6 We can mark this as Exhibit 12?

7 MS. GEHLING: No.

8 MR. OWENS: 13. Okay.

9 (DLHB Exhibit No. 13
10 marked for identification.)

11 EXAMINATION

12 BY MR. OWENS:

13 Q All right. So I'm going to jump around a little
14 bit, but it's -- trust me, it's for the -- the
15 purpose of expediting things to the extent I
16 really -- I can. I'm showing you what's been
17 marked as Exhibit No. 11, which is, of course,
18 your statement that you gave to DCI, the one
19 we've been discussing. And I'm just going to
20 draw your attention to page number four, the
21 second full paragraph there. Do you see where
22 you mentioned having previously stopped somebody
23 as a result of a foot pursuit who had a firearm
24 about a week before and there's the address
25 there?